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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY

U.S. Citizenship and Immigration Services

B7

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 07 2011

IN RE: Petitioner: [redacted]

PETITION: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the preference visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an alien entrepreneur pursuant to section 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(5). The director determined that the petitioner had failed to demonstrate a qualifying investment of lawfully obtained funds or that he had created or would create the requisite 10 jobs.

On appeal, counsel asserts that the petitioner can sell or expand his current business to create the requisite jobs. Counsel further asserts that the difficulty in securing a loan without work authorization and in the current economy makes it difficult to develop a business without government help. Counsel suggests that if the Department of Homeland Security were able to issue loans or coordinate with government "loan managers," the entrepreneur program would be more successful. Counsel indicates that he would submit a brief and or additional evidence to the AAO within 30 days. Counsel dated the appeal March 5, 2010. As of this date, more than nine months later, this office has received nothing further. Thus, the appeal will be adjudicated based on the assertions on the Form I-290B, Notice of Appeal or Motion, and the record before the director.

For the reasons discussed below, we concur with the director's bases of denial. Beyond the decision of the director, the petitioner has also failed to establish that the commercial enterprise in which the petitioner has invested is "new" as defined at 8 C.F.R. § 204.6(e). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), which amends portions of the statutory framework of the EB-5 Alien Entrepreneur program, was signed into law on November 2, 2002. Section 11036(a)(1)(B) of this law eliminates the requirement that the alien personally establish the new commercial enterprise. Section 11036(c) provides that the amendment shall apply to aliens having a pending petition. As the petition was filed after November 2, 2002, the petitioner need not demonstrate that he personally established a new commercial enterprise. The issue of whether the petitioner purchased a preexisting business is still relevant, however, as a petitioner must still demonstrate that the commercial enterprise is "new" as defined at 8 C.F.R. § 204.6(e) as well as the eventual creation of 10 new jobs.

Section 203(b)(5)(A) of the Act, as amended, provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and

(ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

MINIMUM INVESTMENT AMOUNT

On the initial petition, the petitioner indicated that the petition is based on an investment in a business, [redacted], doing business as [redacted], located in a targeted employment area for which the required amount of capital invested has been adjusted downward to $500,000.

The regulation at 8 C.F.R. § 204.6(e) states, in pertinent part, that:

> *Targeted employment area* means an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150 percent of the national average rate.

The regulation at 8 C.F.R. § 204.6(j)(6) states that:

> If applicable, to show that the new commercial enterprise has created or will create employment in a targeted employment area, the petition must be accompanied by:
>
> (i) In the case of a rural area, evidence that the new commercial enterprise is principally doing business within a civil jurisdiction not located within any standard metropolitan statistical area as designated by the Office of Management and Budget, or within any city or town having a population of 20,000 or more as based on the most recent decennial census of the United States; or
>
> (ii) In the case of a high unemployment area:
>
> > (A) Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average unemployment rate of 150 percent of the national average rate; or
> >
> > (B) A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 C.F.R. § 204.6(i).

A petitioner must demonstrate that the location of the business was in a targeted employment area at the time of filing. *Matter of Soffici*, 22 I&N Dec. 158, 159-160 (Comm. 1998), *cited with approval in Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1041 (E.D. Calif. 2001).

As noted by the director, the petitioner did not submit the evidence required under 8 C.F.R. § 204.6(j)(6), quoted above, either initially or in response to the director's request for additional evidence. On appeal, counsel does not contest the director's conclusion that the petitioner has not established that the new commercial enterprise is in a targeted employment area as defined at 8 C.F.R. § 204.6(e), quoted above. We concur with the director's reasoning and conclusion on this issue. Specifically, without the required initial documentation required under 8 C.F.R. § 204.6(j)(6), the petitioner cannot meet his burden of establishing that the investment is within a targeted employment area. We further note that the petitioner has not even decided where he will eventually create the necessary employment and is even considering establishing a business in Canada. Without knowing the location of the ultimate business, we cannot conclude that the petitioner has invested or even will invest in a targeted employment area. Thus, the required amount of capital in this case is $1,000,000.

NEW COMMERCIAL ENTERPRISE

Section 203(b)(5)(A)(i) of the Act states, in pertinent part, that: "Visas shall be made available . . . to qualified immigrants seeking to enter the United States for the purpose of engaging in a *new* commercial enterprise" (Emphasis added.)

The regulation at 8 C.F.R. § 204.6(e) defines "new" as established after November 29, 1990.

The regulation at 8 C.F.R. § 204.6(h) states that the establishment of a new commercial enterprise may consist of the following:

> (1) The creation of an original business;
>
> (2) The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or
>
> (3) The expansion of an existing business through the investment of the required amount, so that a substantial change in the net worth or number of employees results from the investment of capital. Substantial change means a 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees. Establishment of a new commercial enterprise in this manner does not exempt the petitioner from the requirements of 8 CFR 204.6(j)(2) and (3) relating to the required amount of capital investment and the creation of full-time employment for ten qualifying employees. In the case of a capital investment in a troubled business, employment creation may meet the criteria set forth in 8 CFR 204.6(j)(4)(ii).

As stated above, the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (2002), amends portions of the statutory framework of the EB-5 Alien Entrepreneur program, eliminating the requirement that the alien personally establish the new commercial enterprise. As this amendment did not eliminate the requirement that the commercial enterprise be "new," we find that the regulation at 8 C.F.R. § 204.6(h) is still relevant for commercial enterprises the petitioner or someone else established prior to November 29, 1990.

The record contains no evidence as to when [redacted] was initially established. Thus, the petitioner has not established that someone created [redacted] as an original business after November 29, 1990. The record also contains no evidence that someone restructured the market after November 29, 1990. Initially, counsel asserted that the petitioner purchased the market in 2001 and expanded it by more than 100 percent in terms of net worth or employees. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). Counsel references the petition, the tax returns and "other evidence" as demonstrating that the business currently has a net worth of over $1,000,000 and three employees.

On the Form I-526, the petitioner indicated that the business' net worth was $289,000 at the time of his investment and $1,030,000 currently. The petitioner also indicated that there were two employees at the time of his investment and three employees currently.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Moreover, the regulation at 8 C.F.R. § 204.6(j)(1)(iii), in pertinent part, requires the following initial evidence to demonstrate that the alien (or someone else) has established a new commercial enterprise through expansion:

> This evidence must be in the form of stock purchase agreements, investment agreements, certified financial reports, payroll records, or any similar instruments, agreements, or documents evidencing the investment in the commercial enterprise and the resulting substantial change in the net worth, number of employees.

We note that in order to demonstrate the requisite expansion, it is necessary to document the pre-investment net worth or employment as well as the ultimate net worth or employment. The petitioner did not submit financial reports or payroll records or similar documents evidencing a substantial change in the net worth or number of employees. While the petitioner submitted [redacted] 2001, 2006 and 2007 Internal Revenue Service (IRS) Form 1120S U.S. Income Tax Returns for an S Corporation, the petitioner did not submit the tax returns of the previous entity. Even if we accept the 2001 tax return as establishing the net worth and employment prior to the petitioner's investment, the tax returns do not support counsel's assertion. In 2001, the beginning net worth calculated from

the information on Schedule L amounts to $50,000.[1] By the end of the year, the net worth had decreased to $49,770. In 2006 and 2007 the petitioner indicated on line 8 of Schedule B that [redacted] total receipts for the tax year and its total assets at the end of the year were less than $250,000; thus it did not have to complete Schedule L per the instructions on that line. Thus, the returns do not support counsel's assertion that the net worth, by definition no greater than total assets,[2] is more than $1,000,000. Without a complete Schedule L or certified financial reports pursuant to 8 C.F.R. § 204.5(j)(1)(iii), we cannot determine if the actual net worth is 40 percent greater than $50,000.

In addition, the 2001 tax return shows no salaries or wages and no cost of labor expenses. The 2006 and 2007 tax returns also reflect no salaries and wages or cost of labor expenses. Thus, the petitioner has not established that he has created any employment. While the 2006 and 2007 tax returns both reflect $24,000 in officer compensation, the petitioner lists his own salary on the Form I-526 as $40,000. Thus, it does not appear that the $24,000 in officer compensation can account for the three employees counsel asserts are working at the [redacted] in addition to the petitioner's own salary.

In light of the above, the petitioner has not established that the [redacted] is "new" as defined at 8 C.F.R. § 204.6(e) and further explained at 8 C.F.R. § 204.6(h).

INVESTMENT OF CAPITAL

The regulation at 8 C.F.R. § 204.6(e) states, in pertinent part, that:

> *Capital* means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness.
>
> * * *
>
> *Invest* means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

On the Form I-526, the petitioner indicated that he had invested $500,000 on January 2, 2001 and $1,100,000 total. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22

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[1] Net worth is a defined accounting term reflecting total assets less total liabilities. Barron's Dictionary of Accounting Terms 295 (3rd ed. 2000). The Schedule L reflects total assets of $212,000 and total liabilities of $162,000 at the beginning of 2001, resulting in a net worth of $50,000.

[2] Barron's Dictionary of Accounting Terms 295 (3rd ed. 2000).

I&N Dec. at 165 (citing *Matter of Treasure Craft of California,* I&N Dec. at 190). Moreover, the regulation at 8 C.F.R. § 204.6(j) states, in pertinent part, that:

> (2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:
>
> > (i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;
> >
> > (ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices, sales receipts, and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;
> >
> > (iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;
> >
> > (iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or
> >
> > (v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

Initially, counsel asserted that the petitioner was the owner of a business with a net worth of more than $1,000,000 that the petitioner could "sell and repurchase to secure [a] green card for himself and his wife and minor son." Counsel continued that the business "can afford to expand and hire ten" qualifying employees. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506.

The petitioner submitted evidence that he and his wife own 1,000 shares in [redacted]. As stated above, the only tax return containing a completed Schedule L is 2001, which shows total stock of $50,000 at the beginning and end of the year. The Schedule L also shows shareholder loans of $137,000 at the beginning of the year and $136,000 at the end of the year. The petitioner did not submit wire transfer receipts or canceled checks documenting the transfer of any money from the petitioner to [redacted]. The petitioner also failed to submit the purchase agreement and closing statement for his purchase of [redacted] in 2001.

The director requested evidence that the petitioner had deposited or wired the funds he claimed to have invested into [redacted] on the Form I-526. In response, counsel asserted that the petitioner was in the process of investing capital of more than $1,000,000 and references a "broker agreement to sell/expand present business with two employees and buy potential business that will accommodate ten employees." Counsel continued: "In the alternative, [the petitioner] is willing to sell his present business lawfully for more than one million dollars cash and buy a bigger business with one million dollar, to satisfy the requirement that invested capital was obtained through lawful means under 8 C.F.R. § 204.6(j)(3)." Counsel asserted that the petitioner requires a work permit before expanding his business, that the petitioner is reluctant to undertake the project and "loose all the money by borrowing more" if the petition might be denied. Finally, counsel stated that the petitioner "has enough money and will hire ten potential employees to expand his business here or in Canada."

The petitioner submitted a document entitled [redacted]. The document, dated November 27, 2009, describes the petitioner's "offer" to purchase [redacted] for $1,050,000. While the petitioner signed the agreement, the owner of [redacted] did not. Thus, this document does not entail any commitment to invest, certainly not as of July 28, 2009, the date the petitioner filed the petition. The petitioner must establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

On appeal, counsel reiterates the claim that the petitioner has invested "over one million dollars" in [redacted] "which can be expanded or sold for one million dollars and reinvested to permit hiring of ten" qualifying employees "with more loan and expansion." Counsel cites no legal authority, and we know of none, suggesting that Congress intended the entrepreneur visa for aliens who propose, once the visa petition is approved, to attempt to obtain the necessary funds through the sale of assets and loans to open a business of unspecified type and location.

We acknowledge that the petitioner need only be actively in the process of investing. Nevertheless, it is important to restate the following language from the regulation at 8 C.F.R. § 204.6(j)(2):

> Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital.

Simply formulating an idea for future business activity, without taking meaningful concrete action, is insufficient for a petitioner to meet the at-risk requirement. *Matter of Ho*, 22 I&N Dec. 206, 210 (Comm'r. 1998).

The record contains no evidence of how much the petitioner has invested in [redacted]. Specifically, as stated above, the petitioner has been unresponsive to the director's request for wire transfer receipts or other transactional evidence documenting any investment in [redacted] Counsel's assertion that, if the petition is approved, the petitioner will sell [redacted] and invest the money in a different business that might generate sufficient employment is speculative and does not demonstrate that, as of the date of filing the petition, the petitioner had already committed the required amount of capital.

In light of the above, the petitioner has not submitted sufficient evidence of an investment or sufficient evidence that he is actively in the process of investing such that the funds are currently committed and at risk.

SOURCE OF FUNDS

Initially, counsel asserted that the petitioner was able to demonstrate the lawful source of his funds through "financial statement, based on purchase of stock, goodwill, real property, from others by [the petitioner] himself with his own money, or contributed by [the petitioner]." Counsel then concludes that the petitioner's investment was "lawful, involves money he earned while with a work permit through late amnesty and outside capital not drugs."

The regulation at 8 C.F.R. § 204.6(j), however, requires specific evidence. Specifically, that regulation states, in pertinent part, that:

> (3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:
>
> (i) Foreign business registration records;
>
> (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;
>
> (iii) Evidence identifying any other source(s) of capital; or
>
> (iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise)

> involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

The petitioner submitted his IRS Form 1040 U.S. Individual Tax Returns for 2006 and 2007, years after he allegedly invested in [redacted]. Moreover, these returns reflect adjusted gross income of $35,330 in 2006 and $35,686 in 2007. These amounts are inconsistent with the petitioner's lawful accumulation of at least $1,000,000 for investment purposes. As noted by the director, the petitioner's response to the director's request for additional evidence included no new evidence of how the petitioner might have accumulated the funds he allegedly used in 2001 to purchase [redacted] or to fund any subsequent investments in that business. Rather, counsel appears to suggest that [redacted] will serve as the lawful source of funds for a future investment. The petitioner submitted an appraisal of his condominium. The appraisal lists the petitioner as a borrower. The appraised value for the property is $300,000. As the appraisal does not indicate the amount of the petitioner's mortgage, the petitioner's equity in this property is unknown. Moreover, as the petitioner still owned the property as of the September 22, 2009 appraisal date, this property could not have served as the lawful source of the petitioner's claimed investment in 2001. Regarding any use of the proceeds from a future sale of [redacted] to fund a future investment, the petitioner cannot rely on a hypothetical future investment. 8 C.F.R. § 204.6(j)(2); *Matter of Ho*, 22 I&N Dec. at 210.

Without documentation of the path of the funds, the petitioner cannot meet his burden of establishing that the funds are his own funds. *Matter of Ho*, 22 I&N Dec. at 210-211; *Matter of Izummi*, 22 I&N Dec. 169, 195 (Comm'r. 1998). Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1040 (E.D. Calif. 2001) *aff'd* 345 F.3d 683 (9th Cir. 2003) (affirming a finding that a petitioner had failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

The petitioner has not submitted the required initial evidence required to demonstrate the lawful source of any funds invested by purchasing [redacted] in 2001 and through the filing date of the petition.

EMPLOYMENT CREATION

The regulation at 8 C.F.R. § 204.6(j)(4)(i) states:

> To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:
>
> (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or

> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

The regulation at 8 C.F.R. § 204.6(e) states, in pertinent part:

> *Employee* means an individual who provides services or labor for the new commercial enterprise and who receives wages or other remuneration directly from the new commercial enterprise. In the case of the Immigrant Investor Pilot Program, "employee" also means an individual who provides services or labor in a job which has been created indirectly through investment in the new commercial enterprise. This definition shall not include independent contractors.
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> * * *
>
> *Qualifying employee* means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien.

Section 203(b)(5)(D) of the Act, as amended, now provides:

> Full-Time Employment Defined – In this paragraph, the term 'full-time employment' means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

Full-time employment means continuous, permanent employment. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1039 (E.D. Calif. 2001) *aff'd* 345 F.3d 683 (9th Cir. 2003) (finding this construction not to be an abuse of discretion).

Pursuant to 8 C.F.R. § 204.6(j)(4)(i)(B), if the employment-creation requirement has not been satisfied prior to filing the petition, the petitioner must submit a "comprehensive business plan" which demonstrates that "due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired." To be considered comprehensive, a business plan must be sufficiently detailed to permit U.S. Citizenship and Immigration Services (USCIS) to reasonably conclude that the enterprise has the potential to meet the job-creation requirements.

A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *Matter of Ho,* 22 I&N Dec. at 213. Elaborating on the contents of an acceptable business plan, *Matter of Ho* states the following:

> The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id.

The petitioner has not submitted quarterly tax returns or payroll records reflecting any employment at [redacted] As discussed above, [redacted] tax returns for 2001, 2006 and 2007, the only ones submitted, reflect no wages, salaries or cost of labor expenses. The petitioner's "business plan" consists of counsel's brief and vague reference to a potential expansion of the business or the possible sale of the business and the purchase of a car wash or other business in the United States or Canada. Such brief and vague references by counsel do not meet the strict requirements for a detailed, credible business plan as discussed in *Matter of Ho,* 22 I&N Dec. at 213.

In light of the above, the petitioner has not submitted the required initial evidence to demonstrate that he has created or will create the requisite jobs.

For all of the reasons set forth above, considered in sum and as alternative grounds for denial, this petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.